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In the Supreme Court of the United States

OCTOBER TERM, 1981

SAMUEL R. PIERCE, JR., SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL., PETITIONERS

v.

BARBARA ROSS, ET AL.

SAMUEL R. PIERCE, JR., SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL., PETITIONERS

v.

HILDA ABRAMS, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH AND NINTH CIRCUITS

MOTION TO VACATE

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The Solicitor General, on behalf of the Secretary of Housing and Urban Development and the other petitioners, requests this Court to vacate the judgments of the courts of appeals and to remand these cases to the district court for dismissal when the parties jointly so move.

1. These cases present the question whether the Secretary of Housing and Urban Development may decline to implement the "operating subsidy" program established by

Section 236(f)(3) of the National Housing Act, 12 U.S.C. (& Supp. IV) 1715z-1(f)(3).[1] The courts of appeals in these cases held that the statute required the Secretary to implement the program. *Ross* v. *Community Services, Inc.*, 544 F. 2d 514 (4th Cir. 1976); *Abrams* v. *Hills*, 547 F. 2d 1062 (9th Cir. 1976). This Court granted the Secretary's petitions for certiorari on May 23, 1977. 431 U.S. 928.

Subsequent to the filing of briefs, the parties entered into negotiations to settle these cases, together with a nationwide class action (*Underwood* v. *Harris*, Nos. 76-1603 and 76-1650 (D.C. Cir.)) in which this Court granted a stay (429 U.S. 892 (1976)), and a number of other cases involving the same issues in various federal courts. This Court accordingly postponed oral argument in these cases, and, on December 4, 1978, granted the Solicitor General's motion to refer them to the appropriate district courts to consider settlement. 439 U.S. 1001.

On April 5, 1979, the United States District Court for the District of Columbia approved a stipulation of settlement in the *Underwood* case and transferred the case to the United States District Court for the Central District of California for the administration of the distribution of the fund created by the stipulation among the "eligible recipients" (which included every tenant who resided in a Section 236 project between February 1, 1975 and September 30, 1977, and who paid in excess of 25-30% of his or her income for rent). The United States District Court for the District of Maryland approved a stipulation for settlement in *Ross* on June 26, 1979, and the United States District Court for

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[1] Under the program, federal funds were to be provided to housing project owners to reduce the rental charges to lower-income tenants residing in housing projects assisted under Section 236 of the National Housing Act, 12 U.S.C. (& Supp. IV) 1715z-1.

the Central District of California approved a stipulation for settlement in *Abrams* on September 17, 1979.[2]

The stipulations provide that when the fund has been distributed to the "eligible recipients," the parties in each of the cases will file joint motions in the respective district courts requesting the entry of judgments of dismissal (*Underwood* Stipulation at 16, para. 7; *Abrams* Stipulation at 20, para. 7). Although the distribution to the affected tenants was completed in September 1981, pending before the *Underwood* court are motions for attorney's fees and HUD's application for the return of the unexpended principal of the settlement fund. Despite the pending issues, there is no longer a live case or controversy concerning the legal issue decided by the courts of appeals, which this Court had determined to review.

"The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39 (1950). Accordingly, in light of the intervening mootness, the judgments of the courts of appeals should be vacated, and the cases should be remanded to the district courts for dismissal when the parties jointly so move. See *Great Western Sugar Co.* v. *Nelson*, 442 U.S. 92 (1979); *Alabama* v. *Davis*, 446 U.S. 903 (1980).[3]

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[2]We are lodging with the Clerk of this Court copies of the stipulations of settlement in *Underwood* and *Abrams*. The *Ross* Stipulation is the same as that in *Abrams*. See *Underwood* Stipulation at 3, para. 1.

[3]There is no reason for the Court to defer action on these cases pending the resolution of the attorney's fee motions and HUD's application now before the *Underwood* court. Any further proceedings in the district courts will be totally unrelated to the issue upon which this Court granted certiorari.

Counsel for respondents Ross and Abrams have authorized us to state that they do not object to this proposed procedure.

Respectfully submitted.

REX E. LEE
Solicitor General

MARCH 1982

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